



For file

March 17, 1981

MEMORANDUM FOR MR. RICHARD V. ALLEN
THE WHITE HOUSE

Subject: Paper for the NSC Meeting on Nicaragua

Attached is a paper on Nicaragua for this
week's National Security Council meeting.

L. Paul Bremer, III
Executive Secretary

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~~SECRET ATTACHMENT~~

NSC Paper on Nicaragua

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NSC PAPER ON NICARAGUA

ISSUE

-- How do we meet both legal requirements and our political requirements with regard to Nicaraguan support for violence in other countries?

LEGAL REQUIREMENTS

There is no hard evidence of arms arriving in El Salvador from Nicaragua since February 1. However, the intelligence agencies believe that support for the Salvadoran insurgents probably continues. Support includes training, stockpiling, operations in third countries, and planning for future support. Such an assessment requires us to make a determination under Section 533(f) of the Foreign Assistance Act that Nicaragua is supporting violence in other countries.

POLITICAL REQUIREMENTS

We, nevertheless, have major political requirements which also must be met:

-- we need time to strengthen our security and intelligence positions in El Salvador, and elsewhere in the region, and to develop a strategy for dealing with Cuba. An unremittingly aggressive Nicaragua can make that harder;

-- although we are not optimistic about the outcome in Nicaragua, the situation is volatile and now is not the time to withdraw and pull the plug on private sector and other non-communist forces there;

-- we must be careful not to overload the circuits in the Congress and jeopardize support for the El Salvador program;

-- we need to retain the understanding, and hopefully support, of our European allies as well as key countries such as Venezuela and Mexico for our policy in Nicaragua and El Salvador.

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INTERAGENCY CONCLUSIONS

After extensive discussion in the IG and SIG, there is general interagency agreement on the following course of action which meets the requirements of the law while giving us flexibility to buy time and maneuver tactically:

-- determine under Section 533(f) that Nicaragua is supporting violence in other countries;

-- use Section 614 waiver authority to avoid making the \$40 million in previously disbursed ESF immediately repayable;

-- announce that, if favorable trends continue after further monitoring and evaluation, we will resume PL 480 food aid on humanitarian grounds and possibly development assistance (neither of which are subject to Section 533(f) as ESF is), and will consider eventual resumption of ESF.

The foregoing would have to be implemented very carefully to achieve our multiple objectives.

1. We would have to first consult with the Congress as required on use of Section 614. To those opposed to using 614 we would stress the need to keep the leverage on Nicaragua to hold down arms trafficking so that our El Salvador program has time to take hold. We would also emphasize humanitarian aspects of continuing assistance and the need to avoid pulling the plug on the Nicaraguan moderates.

2. Our Ambassador would present such a decision to the Nicaraguan leadership as a major effort on our part to sustain a constructive relationship despite what they had done to support Salvadoran guerrillas. He would emphasize the waiver and prospects for future aid as major concessions which provide a basis for continuing cordial relations. In connection with our ongoing relations, especially additional assistance, the Ambassador would raise our concerns with maintenance of pluralism, including a free press, and our growing concern with an arms and military buildup out of proportion to other Central American countries.

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3. The President would give the same explanation to President Lopez Portillo personally and seek his intercession with the Nicaraguans. Our Ambassadors would make similar approaches to selected Europeans and Latin Americans, especially the Venezuelans.

4. We would mount a public relations effort to explain the decision at home and abroad.

5. We would continue giving careful attention to the security of our personnel in Nicaragua and to contingency planning in the event of a seizure of our Embassy, which in the present semi-chaos in Nicaragua cannot be excluded. However, we believe that despite the risks it would be wrong to evacuate now. That step would provoke a panic among the moderates, and deprive us of all leverage in the arms trafficking.

6. We would need to choose the moment of surfacing our decision in view of current developments in Nicaragua.

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For a fuller discussion of these issues and of the options not recommended by the SIG, see attached paper prepared for the March 16 SIG.

Attachment:
As stated.

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ISSUE

-- How do we proceed with Nicaraguan assistance?

BACKGROUND

There is no hard evidence of arms arriving in El Salvador from Nicaragua since February 1. However, the intelligence agencies believe that support for the Salvadoran insurgents probably continues. Support includes training Salvadorans, operations in third countries, stockpiling, and planning future support. Efforts to activate the airlift from Costa Rica and overland shipments from Honduran stocks are cited. The intelligence agencies are preparing an assessment which will be distributed separately.

KEY CONSIDERATIONS

-- Our actions must accord with the law. If there is conclusive proof that the Government of Nicaragua is currently abetting violence in other countries, a determination must be made. If the evidence is less than conclusive there is discretion to decide whether or not to make a determination depending on the standard of evidence applied.

-- A confrontation with Nicaragua now could be counterproductive. We need time to develop government forces in El Salvador; a formal cut-off of U.S. aid would eliminate the leverage provided by the threat of a cut-off and could lead to accelerated infiltration into El Salvador, even infiltration of combat personnel.

-- A U.S. aid cut-off would weaken private sector and other non-Communist forces within Nicaragua, possibly fatally.

-- We would also like to continue the operation of our Embassy in Nicaragua so that our intelligence assets can be strengthened. We must be concerned with the safety of our people.

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-- Finally, a confrontation with Nicaragua and even an assistance cutoff will raise an unwanted issue with our European and Latin allies. Mexico, Venezuela and West Germany all strongly urge us to continue our dialogue and assistance to Nicaragua. They either believe there is still hope for a non-communist Nicaragua or want to avoid trouble with their public opinion and leftist groups. We would prefer that it be Nicaraguan actions that show these countries they are wrong.

As the military buildup of Nicaragua's own forces continues, we shall eventually have to react regardless of whether or not Nicaragua is arming others. We cannot permit Nicaragua to become another Cuba, armed to the teeth and potentially intervening in other countries while we continue to provide substantial economic assistance. But it is better -- for our public and worldwide opinion -- to delay our reaction on this point until the buildup is clearer and until we have a more comprehensive Nicaragua strategy.

OPTIONS

The interagency group has developed four options to try to deal with all the above considerations.

IF THE INTELLIGENCE ASSESSMENT DOES NOT PROVIDE CONCLUSIVE PROOF THAT THE GRN IS CURRENTLY ABETTING VIOLENCE, ALL FOUR OPTIONS BELOW ARE AVAILABLE:

1. Postponement of a Determination on ESF pending additional evidence on support for violence in other countries. Resume limited shipment of PL-480 (\$10 million remains suspended) or possibly development assistance (\$10 million remains suspended.) Neither PL-480 nor development assistance are subject to the statutory determination. Would avoid a confrontation, and provide time to obtain better evidence of Nicaragua's intentions. In the interim, a limited amount of PL-480 (\$3 million) would show our interest in maintaining good relations. Resumption of assistance would be difficult to defend in Congress.

2. Strong Statement, no Determination. A strong public statement would be made indicating that the Government of Nicaragua had supported violence in El Salvador but that such activities were now reduced or stopped. We would further state that, nevertheless,

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assistance would be held in suspense until steps are taken to make this improved performance permanent and that a formal determination would be made if there were a reversal of recent improvements. Some PL-480 (\$3 million) would be made available in about three weeks. If favorable trends continue some development assistance might follow. Repayment of previous loans would not be required and it would not be necessary to use 614 authority to waive repayment or subsequently begin ESF assistance should that be desired after an additional testing period.

IF THE INTELLIGENCE ASSESSMENT PROVIDES CONCLUSIVE PROOF THAT THE GRN IS CURRENTLY ABETTING VIOLENCE, ONLY THE FOLLOWING TWO OPTIONS ARE AVAILABLE:

3. Straight Determination. Make a determination that the GRN is involved in terrorism, formally suspend assistance, and call outstanding ESF loans.

Would probably force an immediate confrontation. Does not buy time for our other objectives. Would be popular with some in Congress, but would damage our ability to get wide support for our Salvador policy.

4. Nuanced Determination. A series of steps would be worked out with the Congress and the Nicaraguans in advance of their comprehensive announcement. The elements are:

-- a determination that Nicaragua is involved in abetting violence, worded to concentrate on the past more than the present and to recognize recent improvement;

-- use of provision 614 authority to avoid making previously disbursed ESF funds immediately repayable; this would be presented to Nicaragua as a major concession and to Congress as the price of buying time; a finding that the waiver is important to U.S. national security interests is required as well as prior Congressional consultations.

-- announcement that, if favorable trends continue, PL-480 will be restarted in about three weeks; this is another major carrot for continued Nicaraguan cooperation; the humanitarian aspects would be stressed with Congress;

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-- announcement that, after a further testing period, development assistance could be again considered.

-- finally, the President would indicate that he would subsequently reexamine the situation to see if what Nicaragua is doing on support for violence and other issues warrants a further 614 determination that it is important to U.S. national security interests to restart ESF assistance.

This option is designed to comply with the law, while winning time for our other objectives by providing assistance in moderate amounts. However, it risks repeal or amendment of section 614 which is a valuable authority in many other contexts if there is serious objections in Congress to this use.

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Legal Considerations

Section 533(f) of the Foreign Assistance Act of 1961, as amended, (text attached) was originally enacted in the Special Central American Assistance Act of 1979. It will expire at the end of FY 81 unless reenacted by the Congress. It requires the President to terminate ESF assistance to Nicaragua and makes all outstanding ESF loans due and payable immediately if the President determines "that the Government of Nicaragua ... is aiding, abetting, or supporting acts of violence or terrorism in other countries...." (emphasis added)

The legislative history of the provision indicates that the President has discretion as to the nature and degree of proof to be required. He is without discretion and must make a determination only if there is conclusive evidence that the GRN is providing material support (as opposed to moral or political support) to acts of violence in a foreign country.

The plain language of the statute provides for a determination only where the evidence supports a finding that the GRN is supporting acts of violence at the time the determination is being made. This is consistent with the view that the purpose of the statute is to deter present and future involvement in arms traffic rather than simply to punish Nicaragua for past activities in this area without regard to current GRN actions.

Nevertheless, the President may find the GRN to be supporting violence within the meaning of the statute based on past activities if he considers those activities to evidence a continuing pattern of support for acts of violence. (There is an inherent time lag in intelligence reports and therefore the statute cannot reasonably be interpreted as requiring a determination based on up-to-the-moment data.) On the other hand, if he is not persuaded that the evidence conclusively establishes current GRN support for violence he would not be obligated to make a determination irrespective of the degree of proof of past GRN activities.

Given the judgmental factors necessarily involved in deciding whether or not a determination should be made under this provision, a certain degree of Congressional criticism is likely irrespective of the decision.

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Section 614(a) of the Foreign Assistance Act of 1961, as amended (text attached) is denominated a "Special Authority." It provides the President the important extraordinary flexibility to provide assistance to foreign countries "without regard" to the other provisions of the Act. It has traditionally been used to avoid the application of outdated provisions or the application of statutory restrictions of a general nature to specific circumstances in which they were clearly not intended to apply. For example, Section 614 was utilized to provide assistance to Egypt in reopening the Suez Canal and is currently being used to in effect reprogram funds from Egypt to El Salvador.

Section 614(a) was amended this year to provide the President additional authority to waive statutory restrictions under the Arms Export Control Act. This amendment was obtained on the basis of representations that Section 614(a) authority would be used prudently.

The Congress has also established a requirement for the President to engage in formal consultations with the Congress prior to utilizing this authority. Section 614(a) authority could technically be used to overcome the requirements of Section 533(f) to call outstanding loans to Nicaragua and to resume ESF assistance at some later date. However, it would be extremely difficult to justify so using it to override a recently enacted provision that was clearly intended to produce a specific result in a particular country under specific circumstances. Such a departure from the traditional uses of Section 614(a) would be challenged in the Congress, by those who would like to eliminate or severely restrict the President's broad authority under this section.

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